

Remarks / Arguments

With this Amendment, the Applicant has amended claims 1, 4, 7, and 13-17, and has added claims 18-21. No new matter has been added by virtue of these amendments and added claims. Support for these amendments and added claims is found throughout the specification, such as at page 5, lines 5-7.

With this Amendment, the Applicant has also canceled claims 5, 11, and 12, without prejudice. Claim 6 was canceled in a previous Amendment. Therefore, claims 1-4, 7-10, and 13-21 are currently pending in this application.

1. Claim Rejections - 35 U.S.C. §103

a. Shayan in view of Frank et al.

Claims 1 – 3, 5, 7, and 11 – 17 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shayan in view of Frank et al.

Claims 5, 11, and 12 have been canceled.

Shayan and Frank et al., either alone or in combination, do not teach or suggest all of the features recited in claim 1, as amended. Neither Shayan nor Frank et al., alone or in combination, teaches or suggests a lid comprising “a central depressed area of a size and shape whereby during use a user’s nasal area is loosely engaged by the central depressed area, and wherein the lid further comprises a vent that is smaller in area than the opening of the reservoir,” as recited in the amended claim 1.

As the Examiner correctly acknowledges, Shayan does not disclose a lid comprising a central depressed area for loosely engaging a user’s nasal area. (Office Action, page 2, paragraph 3.)

Furthermore, Shayan does not disclose a lid comprising a vent that is smaller in area than the opening of the reservoir, as recited in the amended claim 1. In the Shayan device, the vapor that passes through the vent of the lid is created in a source material holder 22. The vapor flows from the source material holder 22 into a venturi tube receptacle 40. (*See* Col. 7, lines 28-33.) If the source material holder 22 is considered to be the reservoir of the Shayan device, then the

opening of the reservoir is the opening between the source material holder 22 and the venturi tube receptacle 40. If the venturi tube receptacle 40 is considered to be the reservoir of the Shayan device, then the opening of the reservoir is the opening between the venturi tube receptacle and the top 12. (See Figs. 2 and 3.) The vent of the top 12, or lid, of the Shayan device is the opening 11. Shayan does not teach or suggest that the opening 11 is smaller in area than either the opening between the source material holder 22 and the venturi tube receptacle 40, or the opening between the venturi tube receptacle 40 and the top 12. Therefore, Shayan does not teach or suggest the use of a lid comprising a vent that is smaller in area than the opening of the reservoir.

Frank et al. also fails to disclose a lid comprising a vent that is smaller in area than an opening of the reservoir. In the Frank et al. device, the steam inhaled by a user is created in the steam generating and control section 12. (Col. 5, lines 8-12.) Steam passes from the steam generating and control section 12 to the hood section 14 through openings 102 (see Figure 3). If the steam generating and control section 12 is considered to be a reservoir, then each of the openings 102 is an opening of the reservoir. The Examiner has referred to the hood section 14 as a lid. (Office Action, page 2, paragraph 3.) Even if the hood section 14 is considered to be a lid, Frank et al. does not teach or suggest that a vent of hood section 14 is smaller in area than an opening 102 of the reservoir 12. Therefore, Frank et al. does not teach or suggest the use of a lid comprising a vent that is smaller in area than an opening of the reservoir, either alone or in combination with Shayan.

In sum, neither Shayan nor Frank et al., alone or in combination, teaches or suggests a lid comprising “a central depressed area of a size and shape whereby during use a user’s nasal area is loosely engaged by the central depressed area, and wherein the lid further comprises a vent that is smaller in area than the opening of the reservoir.” Moreover, the differences between the invention of claim 1 and the combination of Shayan and Frank et al. would not have been obvious to one of ordinary skill in the art. Consequently, the invention of claim 1, as amended, is not obvious in light of Shayan and Frank et al.

Claims 2, 3, and 7 are dependent on claim 1, and therefore are also not obvious in light of Shayan and Frank et al. Moreover, claim 7 is not obvious in light of Shayan and Frank et al., because neither Shayan nor Frank et al., either alone or in combination, teaches or suggests a 60038399.1

portable vapor inhaler wherein the reservoir and the lid form substantially one piece and the lid further comprises a closeable opening whereby the effervescent composition and water can be added to the reservoir. Regarding claim 7, the Examiner states that “Shayan discloses that the receptacle and lid are interchangeable (column 6, lines 50-55).” (Office Action, page 3, paragraph 3.) However, it seems that Shayan, in column 6, lines 50-55, is merely stating that in the Shayan specification, the phrase “second receptacle” can be used to refer to the top 12. Even if the top 12 of the Shayan device is considered to be a lid, the top 12 of the Shayan device does not include a closeable opening whereby an effervescent composition and water can be added to the reservoir. The substance used to create vapor in Shayan is not added through the top 12; it is added by ejecting the source material drawer 22, and then placing a substance in the source material holder which is contained within the source material drawer. (Col. 6, lines 4-7.) This source material drawer 22 is not located in the top 12. (*See* Fig. 1.)

Claim 13 is not obvious in light of Shayan and Frank et al., for the same reasons that claim 1 is not obvious.

With regard to claims 14-17, the Examiner states that the “modified device disclosed by Shayan and Frank has all of the structural limitations needed to perform the recited method steps and is fully capable of doing so. It would have been obvious to one of ordinary skill in the art at the time the invention was made, upon seeing the modified device, to perform the recited method steps of the instant claim.” (Office Action, page 3, paragraph 4).

The Applicant respectfully asserts that a device made from the combination of Shayan and Frank et al. would not have all of the features needed to perform the recited method steps of claims 14-17, as amended. Claims 14 -17, as amended, each include the method step of “connecting a lid comprising a vent that is smaller in area than the opening of the reservoir, and further comprising a central depressed area of a size and shape whereby during use a user’s nasal area is loosely engaged by the central depressed area, to the reservoir.” As discussed above with regard to claim 1, a device made from the combination of Shayan and Frank et al. would not include a lid comprising a vent that is smaller in area than the opening of the reservoir, and further comprising a central depressed area of a size and shape whereby during use a user’s nasal area is loosely engaged by the central depressed area. Therefore, a device made from the combination of Shayan and Frank et al. would not include all of the features necessary to perform

the recited method steps of claims 14 – 17. Consequently, it would not have been obvious to one of ordinary skill in the art, upon seeing a device made from the combination of Shayan and Frank et al., to perform the recited method steps.

For the foregoing reasons, claims 1 – 3, 7, and 13 – 17 are not obvious in light of Shayan and Frank et al. Reconsideration of the rejection of these claims is respectfully requested.

b. Shayan in view of Frank et al. and Ninkov

Claim 8 was rejected under 35 U.S.C. §103(a) as being unpatentable over Shayan and Frank et al. and further in view of Ninkov.

As discussed above under section 1.a., claim 1 is not obvious in light of Shayan and Frank et al. Because claim 8 is dependent on claim 1, claim 8 is also not obvious in light of Shayan and Frank et al. Ninkov does not compensate for the deficiencies in Shayan and Frank et al. discussed above, because Ninkov fails to teach or suggest the structure of any device related to the inhalation of vapors.

Therefore, claim 8 is not obvious in light of Shayan, Frank et al., and Ninkov. Reconsideration of the rejection of claim 8 is respectfully requested.

c. Shayan in view of Frank et al. and Silten

Claims 9 and 10 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shayan and Frank et al. and further in view of Silten.

As discussed above under section 1.a., claim 1 is not obvious in light of Shayan and Frank et al. Because claims 9 and 10 are dependent on claim 1, claims 9 and 10 are also not obvious in light of Shayan and Frank et al. Silten does not compensate for the deficiencies in Shayan and Frank et al. discussed above, as Silten fails to teach or suggest a lid comprising “a central depressed area of a size and shape whereby during use a user’s nasal area is loosely engaged by the central depressed area, and wherein the lid further comprises a vent that is smaller in area than the opening of the reservoir.” In fact, during use of the Silten device, a user’s nasal area would not be engaged by any portion of the lid. Therefore, claims 9 and 10 are not obvious in light of Shayan, Frank et al., and Silten. Reconsideration of the rejection of claims 9 and 10 is respectfully requested.

2. Request for Reconsideration and Allowance

Based upon the above Remarks, claims 1-4, 7-10, and 13-21, as amended, are believed to be in proper form for allowance, and patentable over the prior art made of record. New claims 18 and 19, which are dependent on claim 1, are not obvious over the cited prior art, for the same reasons that claim 1 is not obvious. New claims 20 and 21, which are dependent on claim 13, are not obvious over the cited prior art, for the same reasons that claim 13 is not obvious. Applicant respectfully requests reconsideration of the claim rejections and consideration of the new claims, and requests that a timely Notice of Allowance be issued in this case.

Please direct any questions or comments regarding this application to Audrey J. Babcock at (612) 321-2265.

Respectfully submitted,
CNS, Inc., by its attorneys,

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